

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RITA J. GARCIA,

Plaintiff,

v.

No. CIV 04-827 WJ/DJS

LUNA COMMUNITY COLLEGE, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER
DENYING PLAINTIFF'S MOTION TO FILE SURREPLY**

THIS MATTER comes before the Court pursuant to Plaintiff's Motion to Submit Attached Surreply to Reply Brief in Support of San Miguel County Board of County Commissioners' Motion to Dismiss [Docket No. 59]. Having reviewed the submissions of the parties and being fully advised on the relevant law, I find the motion is not well taken and will be denied.

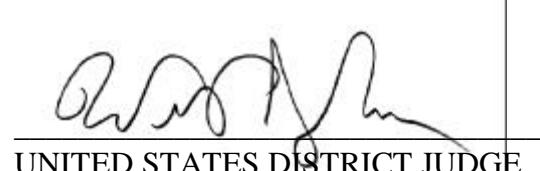
D.N.M.LR-Civ. 7.6(b) states that the filing of a surreply requires leave of the Court. The Tenth Circuit has held that, when a district court accepts a reply brief from a movant that contains new material or argument, the court must either permit a surreply from the nonmovant or must refrain from relying on the new material or argument in ruling on the motion. See Beard v. Seagate Tech., Inc., 145 F.3d 1159 (10th Cir. 1998) discussed in Doebele v. Sprint/ United Mgmt. Co., 342 F.3d 1117, 1139 n. 13 (10th Cir. 2003).

Plaintiff's motion to file a surreply contains no argument that a surreply is necessary because the reply brief contained new material or argument. The Court's review of the pleadings

indicates that Defendants' reply raised no new issues and was entirely responsive to Plaintiff's response brief. Accordingly, Plaintiff is not entitled to file a surreply, and the Court declines to grant leave to file the surreply.

CONCLUSION

IT IS THEREFORE ORDERED that Plaintiff's Motion to Submit Attached Surreply to Reply Brief in Support of San Miguel County Board of County Commissioners' Motion to Dismiss [Docket No. 59] is hereby DENIED.



UNITED STATES DISTRICT JUDGE